IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.285 OF 2004

Haridas Bhagwandas Gandhi and others).. Appellants

Versus

Vijay Ramanlal Gandhi and others).. Respondents

Mr.Pratap Patil for the Appellants.

Mr.R.G.Ketkar for Respondent Nos.1 to 4.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 8TH DECEMBER 2004

P.C.:

. The grievance in this Appeal From Order is that while passing the impugned order, the trial Court has restrained the Defendants from not only creating third party interest in the properties which they claim to have inherited under the Will dated 11th August 1995 and/or the Will dated 16th June 1994. The trial Court has also restrained the Defendants from transferring the properties interse.

2. A submission is made on behalf of the Appellants that they have no grievance about the order restraining them from creating third party rights. However, the Appellants should be permitted to transfer their shares,

though undivided today, interse. A statement is also made on behalf of the Appellants that in the event such interse transfers are permitted, they will not create any third party rights even after such transfers are effected.

3. This appears to be a fair suggestion.

4. Although the property has not been partitioned by metes and bounds and the share of each person is undivided, I do not see any reason to continue the order restraining the Defendants from transferring their undivided shares interse.

5. The impugned order is modified as follows :

> The Defendants may transfer their undivided shares, interse. However, they will not create any third party rights in respect of the suit property which they have either inherited or have been transferred, interse.

6. Appeal From Order disposed of accordingly.

5. Since the Appeal From Order has been disposed of, nothing survives in Civil Application No.654 of 2004

and the same is disposed of accordingly.